

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOSE ALFREDO SUAREZ, ) Case No.: 1:22-cv-00160-SAB (PC)  
)  
Plaintiff, )  
) ORDER DENYING PLAINTIFF'S MOTION FOR  
v. ) APPOINTMENT OF COUNSEL, WITHOUT  
)) PREJUDICE  
KEN CLARK, )  
) (ECF No. 7)  
Defendant. )  
)  
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)

Plaintiff Jose Alfredo Suarez is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for appointment of counsel, filed February 14, 2022. Plaintiff asks for appointment of counsel because he is unable to afford counsel; his imprisonment limits his ability to litigate the action; he has limited knowledge of the law and access to the law library; he is housed in the security housing unit; a trial would likely involve conflicting testimony; and he has limited knowledge of the English language. (ECF No. 7.)

There is no constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

1 Without a reasonable method of securing and compensating counsel, the Court will seek  
2 volunteer counsel only in the most serious and exceptional cases. In determining whether  
3 "exceptional circumstances exist, the district court must evaluate both the likelihood of success on the  
4 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
5 legal issues involved." Id. (internal quotation marks and citations omitted).

6 In the present case, the Court does not find the required exceptional circumstances. Even if it  
7 assumed that Plaintiff is not well versed in the law and that he has made serious allegations which, if  
8 proved, would entitle him to relief, his case is not exceptional. The Court is faced with similar cases  
9 almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and  
10 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel. See  
11 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) ("Most actions require development of  
12 further facts during litigation and a pro se litigant will seldom be in a position to investigate easily the  
13 facts necessary to support the case.") The test is whether exception circumstances exist and here, they  
14 do not. At this early stage of the litigation, the Court cannot find Plaintiff is likely to succeed on the  
15 merits, as it has yet to screen Plaintiff's complaint. In addition, circumstances common to most  
16 prisoners, such as lack of legal education and limited law library access, do not establish exceptional  
17 circumstances that would warrant a request for voluntary assistance of counsel. Finally, while the  
18 Court has yet to screen Plaintiff's complaint, the Court has conducted a cursory review of the  
19 complaint and finds that the legal issues present in this action are not complex and that Plaintiff is able  
20 to clearly articulate his claims. Accordingly, Plaintiff's motion for the appointment of counsel is  
21 denied, without prejudice.

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23 IT IS SO ORDERED.

24 Dated: February 16, 2022



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UNITED STATES MAGISTRATE JUDGE